



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of April 20, 2010
Approved April 27, 2010

Members present: Chairman Doug Andrew, Vice Chairman Scott Boisvert, Members John (Jack) Downing, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:45 pm.

At the August 25, 2009 meeting Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. Mr. Andrew stated that the appointment remains in effect.

MINUTES

Mr. Downing made the motion to accept the minutes of the March 30, 2010 meeting as written. Motion seconded by Mrs. Bolduc with unanimous favorable vote except for Mr. Boisvert who abstained as he was not present at that meeting.

Case # 010-003
Jeremy & Amanda Lennon
MAP 2 LOT 129
Route 111A

Present: Owners Jeremy and Amanda Lennon; abutters Charles Forsythe and Christopher Aubin.

Mr. Andrew opened this Public Hearing at 7:45 p.m. and stated that this is a continuation of the March 30, 2010 portion of the Public Hearing which was continued to allow time for the Board to conduct a site visit.

Site Visit: Mr. Andrew reported that at 6:30 pm on April 8, 2010 he met ZBA Member John (Jack) Downing and Alternate Meredith Bolduc at the site of Map 2 Lot 129 where they were joined by

owners Jeremy and Amanda Lennon for the purpose of a site visit. Also present at the site visit were: Don Carey; abutters Tom Stanley, Andy Horvath, K. Orfanos, Chris Aubin, Charles Forsythe and Brian Smith. The group viewed the parcel as it fronts on Route 111A. Mr. Lennon explained that his intent is to use the property for one single family home and to continue to use the access as a driveway for this one house. The group found that this is a 50' wide access that flares to 91.58' as the property fronts on RT 111A. The 50' access continues for approximately 200', then the 52.35-acre parcel widens to approximately 1,200'. Mr. Forsythe and Mr. Smith voiced opposition to the granting of a Variance. Several other abutters voiced support of granting the Variance. The group dispersed at 6:43 pm.

Mr. Andrew read Article IV Section 2 of the Fremont Zoning Regulations in effect at the time of the 1981 creation of the property by subdivision recorded as D-10573.

***Section 2.** Every building lot shall have a minimum contiguous lot frontage on Federal, State and Town highways, lakes, ponds, and rivers of one hundred and fifty (150) feet provided that where lots are located on exterior side of a curving street or shoreline a shorter front dimension shall be permitted, provided that the average width of the lot measured across its center shall be one hundred and fifty (150) feet. Building lots on which multiple family dwellings are located shall have an additional frontage of twenty (20) feet per family unit when less than five (5) family units and forty (40) feet per family unit when five (5) or more family units are considered. ie: (one hundred and fifty (150) plus twenty (20) multiplied by the number of family units) or (one hundred and fifty (150) plus forty (40) multiplied by the number of family units).*

Mr. Andrew related to the applicants that there is not a full Board present and that they have the option of waiting for a full five member Board for a decision. It was explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant (or reverse any action of the administrative official). The applicants opted to continue with the four Members present.

The Board revisited the comment sheets below.

Conservation Commission: *There are prime wetlands and a stream on the lot and the Conservation Commission would like a condition stating that there shall be no further subdivision of the lot. The Conservation Commission requests the landowner consider placing a Conservation Easement on the portion that contains the wetlands.*

Health Officer: *No comment*

Code Enforcement Officer: *Existing lot ok.*

Fire Chief: *Driveway should have a turn-around to allow fire apparatus an area to turn around. I believe that this will be a long driveway to access the buildable area.*

The Board continued to review the plan submitted by Mr. Lennon which showed six lots subdivided from the front of the main parcel (Map 2 Lot 129), the right-of-way left to access the 52.35 acre parcel as it fronts on Rt 111A; an existing man-made pond, locations of proposed house, garage, barn, septic, well and locations of all existing abutting properties with current owners. Mrs. Bolduc noted that what is before the ZBA is a frontage issue only and a decision was in no way to address anything else proposed or drawn on the plan.

Mr. Andrew summarized that the owners are seeking a Variance from the terms of Article IV Section 2 of the Fremont Zoning Regulations to allow the existing 91.58' on Rt 111A to be considered minimum lot frontage for their 52.35 acre property to be considered a single family house lot. The applicants are seeking a Variance of 58.42' of the required 150'.

Mr. Andrew asked if the abutters had any further comments either in support or in non-support of the Variance request.

Mrs. Lennon said that all of the abutters that would be affected if the Variance were granted are for it as they stated at the March 30, 2010 portion of this Public Hearing.

In answer to questions by Mr. Boisvert, Mr. Forsythe said that he lives on Rt 111A and a corner of his property abuts a corner of the Lennon property (he showed where his property is location on the plan). Mr. Forsythe said that he is opposed because he feels that when Mr. Lennon purchased the property he knew that he had to keep one lot for frontage and he created his hardship by building on all of the lots. Mr. Lennon said that he did not know he had a problem, adding that if he had known he could have adjusted the lot lines of the front lots to create more frontage for the back lot. Mr. Forsythe said that Mr. Lennon would have had to go through the right channels with the Planning Board to change the lot lines. Mr. Forsythe asked what about the issue of the driveway permit. Mrs. Bolduc answered that a driveway permit would be up to the State as RT 111A is a State highway.

Mr. Aubin said that he is in support of allowing for a driveway and cannot comprehend why a road would be allowed, but not a driveway. He added that there will be no effect on his abutting property if all the Lennon's are looking to do is have their home on the property.

Mrs. Bolduc reiterated that to those present that the issue here is a requested Variance to the required 150' frontage for a house lot, not a driveway issue.

Mr. Aubin asked, as a procedural question, if the Board Members discussed the case outside of the context of a meeting. Mrs. Bolduc answered that they have not, and that they are not allowed to discuss a case or form opinions prior to, or outside of a public hearing. There is a right-to-know law that prohibits this (NH RSA 91-A) which the Board Members are very careful to adhere to.

There was a discussion about the suggestion to restrict the property for no further subdivision. The Members collectively agreed that to place such a restriction on this property would not be in the best interest of the owner or of the Town.

With little more discussion Mr. Andrew read the five conditions of a Variance with Mr. Lennon's written statements submitted with the application (answers in italics) and the Board's vote as follows collectively on Article IV Section 2 of the Fremont Zoning Regulations.

1. Granting the variance would not be contrary to the public interest because:
Lennon- It is an existing driveway used since 1981. The line of sight both left and right is more than sufficient on the roadway. The location of the house will not be within 300' of the closest lot line and because of this is not contrary to public interest.

The Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure “public rights” therefore would not be contrary to the public interest.

Board vote:

Mr. Downing Yes
Mr. Andrew Yes
Mr. Boisvert Yes
Mrs. Bolduc Yes

2. The use is not contrary to the spirit of the ordinance because:

Lennon - This ordinance was implemented to stop narrow building lots. This lot is 52.35 acres and mostly rectangular; 1200 x 1800' +/-.

The Board Members collectively agreed that granting of the Variance would not alter the character of the neighborhood, threaten public health, safety or welfare, or otherwise injure “public rights” therefore would not be contrary to the spirit of the ordinance.

Board vote:

Mr. Downing Yes
Mr. Andrew Yes
Mr. Boisvert Yes
Mrs. Bolduc Yes

3. Granting the Variance would do substantial justice because:

Lennon - There will be no impact on the public if the variance is granted.

The Board Members collectively agreed that granting of the Variance would not cause harm to the general public or to other individuals therefore it would do substantial justice.

Board vote:

Mr. Downing Yes
Mr. Andrew Yes
Mr. Boisvert Yes
Mrs. Bolduc Yes

4. The proposed use would not diminish surrounding property values because:

Lennon -The variance is for an existing driveway used for a single family home. This will not diminish the value of surrounding properties.

The Board Members collectively agreed that granting of the Variance would not diminish the values of surrounding properties.

Board vote:

Mr. Downing Yes
Mr. Andrew Yes
Mr. Boisvert Yes
Mrs. Bolduc Yes

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.

Because of special conditions of the property that distinguish it from other properties in the area:

(A) (i) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property:

Lennon- The property is 52.35 acres; not a narrow lot not landlocked. The existing driveway does not meet the 150' frontage at the roadway. This property is to be used for a single family home. This ordinance was implemented to stop narrow building lots. This lot is 52.35 acres and mostly rectangular; 1200 x 1800' +/-.

The Board Members collectively agreed that; 1) The special condition of the property that distinguishes it from other properties in the area is that it is a 52+ acre parcel with less than 150' frontage; 2) The purpose of the ordinance was to discourage small and narrow parcels; and 3) There is no fair and substantial relationship between the general public purpose of the ordinance provision because this is a large parcel, the restriction as applied to this property does not serve that purpose in a fair and substantial way.

Board Vote:

Mr. Downing Yes

Mr. Andrew Yes

Mr. Boisvert Yes

Mrs. Bolduc Yes

and

(ii) The proposed use is a reasonable one.

Lennon - It is reasonable because it is a large piece of land with no other outlets to it for a single family home. This large property far exceeds the required 3-acre minimum lot size for a single home.

The Board Members collectively agreed that the proposed use of the property for a single family home is reasonable and would not alter the character of the neighborhood.

Board vote:

Mr. Downing Yes

Mr. Andrew Yes

Mr. Boisvert Yes

Mrs. Bolduc Yes

Mr. Downing made the motion that, based on the information presented and as the result of the Boards vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant a Variance of fifty nine (59) feet to Jeremy and Amanda Lennon to the terms of Article IV Section 2 as set forth in the Town of Fremont Zoning Ordinance, to allow their 52.35 acre parcel at Map 2 Lot 129 that was created by subdivision in 1981 to be considered a single family house lot with less than the required one hundred and fifty (150) feet, but not less than ninety one (91) feet, of frontage on a Federal, State or Town highway.

1. That the driveway shall have a turn-around sufficient to allow fire and emergency apparatus adequate access to the buildable area and approved by the Fire Chief.

Motion seconded by Mr. Boisvert.

Board vote:

Mr. Downing Yes

Mr. Andrew Yes

Mr. Boisvert Yes

Mrs. Bolduc Yes

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Mr. Andrew declared the Variance granted and explained to the applicant that there is a thirty (30) day appeal period. He also stated that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed. The applicant submitted payment for the recording fees.

Mrs. Bolduc made the motion to close this Public Hearing at 8:40 pm.
Motion seconded by Mr. Downing with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for April 27, 2010.

At 8:45 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Boisvert with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
